

SENATE BILL NO. 102

INTRODUCED BY NATHE, L. NELSON, CODY, TVEIT, SWIFT,
SWYSGOOD, THOFT, GILBERT, DARKO, GRINDE, MENAHAN, MERCER,
THOMAS, DEVLIN, BRADLEY, BACHINI, HARP, HALLIGAN,
T. BECK, GAGE, B. BROWN

IN THE SENATE

JANUARY 16, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LOCAL GOVERNMENT.

 FIRST READING.

FEBRUARY 15, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 16, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 18, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 48; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LOCAL GOVERNMENT.

 FIRST READING.

MARCH 12, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

 POSTED ON CONSENT CALENDAR.

MARCH 13, 1991 CONSENT CALENDAR, QUESTIONS AND ANSWERS.

MARCH 14, 1991 THIRD READING, CONCURRED IN.
AYES, 99; NOES, 0.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 15, 1991 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. *102*

INTRODUCED BY *NATHE* *J. Nelson* *Code* *Committee*

Lucas *McCoy* *McPherson* *McPherson* *Thomas* *W. L. Gandy*
A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE TRUSTEES
Hadwin *HARP* *Shelley* *Beal* *W. H. P.* *Bob Brown*
OF A RURAL FIRE DISTRICT, THE GOVERNING BODY OF AN

INCORPORATED TOWN WITH A VOLUNTEER FIRE DEPARTMENT, A COUNTY
GOVERNING BODY PROVIDING RURAL FIRE PROTECTION, OR THE
COUNTY COMMISSIONERS FOR A FIRE SERVICE AREA TO ELECT TO
PROVIDE WORKERS' COMPENSATION COVERAGE FOR VOLUNTEER
FIREFIGHTERS; TO PROVIDE THAT A VOLUNTEER FIREFIGHTER WHO
RECEIVES WORKERS' COMPENSATION COVERAGE MAY NOT RECEIVE
DISABILITY BENEFITS UNDER TITLE 19, CHAPTER 12, MCA; AND
AMENDING SECTIONS 19-12-501, 39-71-118, AND 39-71-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1)

The terms "employee", "workman", or "worker" mean:

- (a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of

boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or



1 (e) an airman or other person employed as a volunteer
2 under 67-2-105.

3 (2) (a) If the employer is a partnership or sole
4 proprietorship, such employer may elect to include as an
5 employee within the provisions of this chapter any member of
6 such partnership or the owner of the sole proprietorship
7 devoting full time to the partnership or proprietorship
8 business.

9 (b) In the event of such election, the employer must
10 serve upon the employer's insurer written notice naming the
11 partners or sole proprietor to be covered and stating the
12 level of compensation coverage desired by electing the
13 amount of wages to be reported, subject to the limitations
14 in subsection (2)(d). A partner or sole proprietor is not
15 considered an employee within this chapter until such notice
16 has been given.

17 (c) A change in elected wages must be in writing and is
18 effective at the start of the next quarter following
19 notification.

20 (d) All weekly compensation benefits must be based on
21 the amount of elected wages, subject to the minimum and
22 maximum limitations of this subsection. For premium
23 ratemaking and for the determination of weekly wage for
24 weekly compensation benefits, the electing employer may
25 elect not less than \$900 a month and not more than 1 1/2

1 times the average weekly wage as defined in this chapter.

2 (3) The trustees of a rural fire district, the
3 governing body of an incorporated town with a volunteer fire
4 department, a county governing body providing rural fire
5 protection, or the county commissioners for a fire service
6 area may elect to include as an employee within the
7 provisions of this chapter any volunteer firefighter. A
8 volunteer firefighter who receives workers' compensation
9 coverage under this section may not receive disability
10 benefits under Title 19, chapter 12."

11 **Section 2.** Section 39-71-123, MCA, is amended to read:

12 "39-71-123. Wages defined. (1) "Wages" means the gross
13 remuneration paid in money, or in a substitute for money,
14 for services rendered by an employee. Wages include but are
15 not limited to:

16 (a) commissions, bonuses, and remuneration at the
17 regular hourly rate for overtime work, holidays, vacations,
18 and sickness periods;

19 (b) board, lodging, rent, or housing if it constitutes
20 a part of the employee's remuneration and is based on its
21 actual value; and

22 (c) payments made to an employee on any basis other
23 than time worked, including but not limited to piecework, an
24 incentive plan, or profit-sharing arrangement.

25 (2) Wages do not include:

1 (a) employee travel expense reimbursements or
2 allowances for meals, lodging, travel, and subsistence;

3 (b) special rewards for individual invention or
4 discovery;

5 (c) tips and other gratuities received by the employee
6 in excess of those documented to the employer for tax
7 purposes;

8 (d) contributions made by the employer to a group
9 insurance or pension plan; or

10 (e) vacation or sick leave benefits accrued but not
11 paid.

12 (3) For compensation benefit purposes, the average
13 actual earnings for the four pay periods immediately
14 preceding the injury are the employee's wages, except if:

15 (a) the term of employment for the same employer is
16 less than four pay periods, in which case the employee's
17 wages are the hourly rate times the number of hours in a
18 week for which the employee was hired to work; or

19 (b) for good cause shown by the claimant, the use of
20 the four pay periods does not accurately reflect the
21 claimant's employment history with the employer, in which
22 case the insurer may use additional pay periods.

23 (4) (a) For the purpose of calculating compensation
24 benefits for an employee working concurrent employments, the
25 average actual wages must be calculated as provided in

1 subsection (3).

2 (b) The compensation benefits for a covered volunteer
3 must be based on the average actual wages in his regular
4 employment, except self-employment as a sole proprietor or
5 partner who elected not to be covered, from which he is
6 disabled by the injury incurred.

7 (c) The compensation benefits for an employee working
8 at two or more concurrent remunerated employments must be
9 based on the aggregate of average actual wages of all
10 employments, except self-employment as a sole proprietor or
11 partner who elected not to be covered, from which the
12 employee is disabled by the injury incurred.

13 (5) The compensation benefits for a volunteer
14 firefighter covered pursuant to 39-71-118(3) must be based
15 upon the volunteer firefighter's wages or earnings in his
16 normal occupation."

17 **Section 3.** Section 19-12-501, MCA, is amended to read:

18 "19-12-501. Eligibility for disability and death
19 benefits. (1) In-order-to To qualify for benefits under
20 19-12-504 ~~and 19-12-505~~, a firefighter must, at the time the
21 injury or sickness for which benefits are claimed was
22 incurred ~~or, in-the-case-of-a-claim-under-19-12-505, at the~~
23 ~~time-of-death~~, have been an enrolled active member of a fire
24 company not covered by workers' compensation insurance.

25 (2) To qualify for benefits under 19-12-505, a

LC 0960/01

1 firefighter must, at the time of death, have been an
2 enrolled active member of a fire company."

-End-

APPROVED BY COMM.
ON LOCAL GOVERNMENT

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2 INTRODUCED BY NATHE, L. NELSON, CODY, TVEIT, SWIFT,
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8 OF A RURAL FIRE DISTRICT, ~~THE--GOVERNING--BODY--OF--AN~~
9 ~~INCORPORATED-TOWN-WITH-A-VOLUNTEER-FIRE-DEPARTMENT~~, A COUNTY
10 GOVERNING BODY PROVIDING RURAL FIRE PROTECTION, OR THE
11 COUNTY COMMISSIONERS OR TRUSTEES FOR A FIRE SERVICE AREA TO
12 ELECT TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR
13 VOLUNTEER FIREFIGHTERS; TO DEFINE THE TERM "VOLUNTEER
14 FIREFIGHTER"; TO PROVIDE THAT A VOLUNTEER FIREFIGHTER WHO
15 RECEIVES WORKERS' COMPENSATION COVERAGE MAY NOT RECEIVE
16 DISABILITY BENEFITS UNDER TITLE 19, CHAPTER 12, MCA; AND
17 AMENDING SECTIONS 19-12-501, 39-71-118, AND 39-71-123, MCA."
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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 39-71-118, MCA, is amended to read:

21 "39-71-118. Employee, worker, and workman, AND
22 VOLUNTEER FIREFIGHTER defined. (1) The terms "employee",
23 "workman", or "worker" mean:

24 (a) each person in this state, including a contractor
25 other than an independent contractor, who is in the service

1 of an employer, as defined by 39-71-117, under any
2 appointment or contract of hire, expressed or implied, oral
3 or written. The terms include aliens and minors, whether
4 lawfully or unlawfully employed, and all of the elected and
5 appointed paid public officers and officers and members of
6 boards of directors of quasi-public or private corporations
7 while rendering actual service for such corporations for
8 pay. Casual employees as defined by 39-71-116 are included
9 as employees if they are not otherwise covered by workers'
10 compensation and if an employer has elected to be bound by
11 the provisions of the compensation law for these casual
12 employments, as provided in 39-71-401(2). Household or
13 domestic service is excluded.

14 (b) a recipient of general relief who is performing
15 work for a county of this state under the provisions of
16 53-3-303 through 53-3-305 and any juvenile performing work
17 under authorization of a district court judge in a
18 delinquency prevention or rehabilitation program;

19 (c) a person receiving on-the-job vocational
20 rehabilitation training or other on-the-job training under a
21 state or federal vocational training program, whether or not
22 under an appointment or contract of hire with an employer as
23 defined in this chapter and whether or not receiving payment
24 from a third party. However, this subsection does not apply
25 to students enrolled in vocational training programs as

SECOND READING

1 outlined above while they are on the premises of a public
2 school or community college.

3 (d) students enrolled and in attendance in programs of
4 vocational-technical education at designated
5 vocational-technical centers; or

6 (e) an airman or other person employed as a volunteer
7 under 67-2-105.

8 {2} THE TERM "VOLUNTEER FIREFIGHTER" MEANS A
9 FIREFIGHTER WHO IS AN ENROLLED AND ACTIVE MEMBER OF A FIRE
10 COMPANY ORGANIZED AND FUNDED BY A COUNTY, A RURAL FIRE
11 DISTRICT, OR A FIRE SERVICE AREA.

12 {2}{3} (a) If the employer is a partnership or sole
13 proprietorship, such employer may elect to include as an
14 employee within the provisions of this chapter any member of
15 such partnership or the owner of the sole proprietorship
16 devoting full time to the partnership or proprietorship
17 business.

18 (b) In the event of such election, the employer must
19 serve upon the employer's insurer written notice naming the
20 partners or sole proprietor to be covered and stating the
21 level of compensation coverage desired by electing the
22 amount of wages to be reported, subject to the limitations
23 in subsection {2}{d} (3)(D). A partner or sole proprietor is
24 not considered an employee within this chapter until such
25 notice has been given.

1 (c) A change in elected wages must be in writing and is
2 effective at the start of the next quarter following
3 notification.

4 (d) All weekly compensation benefits must be based on
5 the amount of elected wages, subject to the minimum and
6 maximum limitations of this subsection. For premium
7 ratemaking and for the determination of weekly wage for
8 weekly compensation benefits, the electing employer may
9 elect not less than \$900 a month and not more than 1 1/2
10 times the average weekly wage as defined in this chapter.

11 {3}{4} The trustees of a rural fire district, the
12 governing-body-of-an-incorporated-town-with-a-volunteer-fire
13 department, a county governing body providing rural fire
14 protection, or the county commissioners OR TRUSTEES for a
15 fire service area may elect to include as an employee within
16 the provisions of this chapter any volunteer firefighter. A
17 volunteer firefighter who receives workers' compensation
18 coverage under this section may not receive disability
19 benefits under Title 19, chapter 12."

20 **Section 2.** Section 39-71-123, MCA, is amended to read:

21 **"39-71-123. Wages defined.** (1) "Wages" means the gross
22 remuneration paid in money, or in a substitute for money,
23 for services rendered by an employee. Wages include but are
24 not limited to:

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1 regular hourly rate for overtime work, holidays, vacations,
2 and sickness periods;

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4 a part of the employee's remuneration and is based on its
5 actual value; and

6 (c) payments made to an employee on any basis other
7 than time worked, including but not limited to piecework, an
8 incentive plan, or profit-sharing arrangement.

9 (2) Wages do not include:

10 (a) employee travel expense reimbursements or
11 allowances for meals, lodging, travel, and subsistence;

12 (b) special rewards for individual invention or
13 discovery;

14 (c) tips and other gratuities received by the employee
15 in excess of those documented to the employer for tax
16 purposes;

17 (d) contributions made by the employer to a group
18 insurance or pension plan; or

19 (e) vacation or sick leave benefits accrued but not
20 paid.

21 (3) For compensation benefit purposes, the average
22 actual earnings for the four pay periods immediately
23 preceding the injury are the employee's wages, except if:

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25 less than four pay periods, in which case the employee's

1 wages are the hourly rate times the number of hours in a
2 week for which the employee was hired to work; or

3 (b) for good cause shown by the claimant, the use of
4 the four pay periods does not accurately reflect the
5 claimant's employment history with the employer, in which
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12 must be based on the average actual wages in his regular
13 employment, except self-employment as a sole proprietor or
14 partner who elected not to be covered, from which he is
15 disabled by the injury incurred.

16 (c) The compensation benefits for an employee working
17 at two or more concurrent remunerated employments must be
18 based on the aggregate of average actual wages of all
19 employments, except self-employment as a sole proprietor or
20 partner who elected not to be covered, from which the
21 employee is disabled by the injury incurred.

22 (5) The compensation benefits AND THE PAYROLL, FOR
23 PREMIUM PURPOSES, for a volunteer firefighter covered
24 pursuant to 39-71-118+3}(4) must be based upon the volunteer
25 firefighter's--wages-or-earnings-in-his-normal-occupation. A

1 WAGE OF NOT LESS THAN \$900 A MONTH AND NOT MORE THAN 1 1/2
2 TIMES THE AVERAGE WEEKLY WAGE AS DEFINED IN THIS CHAPTER."

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10 company not covered by workers' compensation insurance.

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or written. The terms include aliens and minors, whether
lawfully or unlawfully employed, and all of the elected and
appointed paid public officers and officers and members of
boards of directors of quasi-public or private corporations
while rendering actual service for such corporations for
pay. Casual employees as defined by 39-71-116 are included
as employees if they are not otherwise covered by workers'
compensation and if an employer has elected to be bound by
the provisions of the compensation law for these casual
employments, as provided in 39-71-401(2). Household or
domestic service is excluded.

(b) a recipient of general relief who is performing
work for a county of this state under the provisions of
53-3-303 through 53-3-305 and any juvenile performing work
under authorization of a district court judge in a
delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational
rehabilitation training or other on-the-job training under a
state or federal vocational training program, whether or not
under an appointment or contract of hire with an employer as
defined in this chapter and whether or not receiving payment
from a third party. However, this subsection does not apply
to students enrolled in vocational training programs as



1 outlined above while they are on the premises of a public
2 school or community college.

3 (d) students enrolled and in attendance in programs of
4 vocational-technical education at designated
5 vocational-technical centers; or

6 (e) an airman or other person employed as a volunteer
7 under 67-2-105.

8 (2) THE TERM "VOLUNTEER FIREFIGHTER" MEANS A
9 FIREFIGHTER WHO IS AN ENROLLED AND ACTIVE MEMBER OF A FIRE
10 COMPANY ORGANIZED AND FUNDED BY A COUNTY, A RURAL FIRE
11 DISTRICT, OR A FIRE SERVICE AREA.

12 ~~(2)~~(3) (a) If the employer is a partnership or sole
13 proprietorship, such employer may elect to include as an
14 employee within the provisions of this chapter any member of
15 such partnership or the owner of the sole proprietorship
16 devoting full time to the partnership or proprietorship
17 business.

18 (b) In the event of such election, the employer must
19 serve upon the employer's insurer written notice naming the
20 partners or sole proprietor to be covered and stating the
21 level of compensation coverage desired by electing the
22 amount of wages to be reported, subject to the limitations
23 in subsection ~~(2)~~(3)(D). A partner or sole proprietor is
24 not considered an employee within this chapter until such
25 notice has been given.

1 (c) A change in elected wages must be in writing and is
2 effective at the start of the next quarter following
3 notification.

4 (d) All weekly compensation benefits must be based on
5 the amount of elected wages, subject to the minimum and
6 maximum limitations of this subsection. For premium
7 ratemaking and for the determination of weekly wage for
8 weekly compensation benefits, the electing employer may
9 elect not less than \$900 a month and not more than 1 1/2
10 times the average weekly wage as defined in this chapter.

11 ~~(3)~~(4) The trustees of a rural fire district, the
12 governing-body-of-an-incorporated-town-with-a-volunteer-fire
13 department, a county governing body providing rural fire
14 protection, or the county commissioners OR TRUSTEES for a
15 fire service area may elect to include as an employee within
16 the provisions of this chapter any volunteer firefighter. A
17 volunteer firefighter who receives workers' compensation
18 coverage under this section may not receive disability
19 benefits under Title 19, chapter 12."

20 **Section 2.** Section 39-71-123, MCA, is amended to read:
21 "39-71-123. Wages defined. (1) "Wages" means the gross
22 remuneration paid in money, or in a substitute for money,
23 for services rendered by an employee. Wages include but are
24 not limited to:

25 (a) commissions, bonuses, and remuneration at the

1 regular hourly rate for overtime work, holidays, vacations,
2 and sickness periods;

3 (b) board, lodging, rent, or housing if it constitutes
4 a part of the employee's remuneration and is based on its
5 actual value; and

6 (c) payments made to an employee on any basis other
7 than time worked, including but not limited to piecework, an
8 incentive plan, or profit-sharing arrangement.

9 (2) Wages do not include:

10 (a) employee travel expense reimbursements or
11 allowances for meals, lodging, travel, and subsistence;

12 (b) special rewards for individual invention or
13 discovery;

14 (c) tips and other gratuities received by the employee
15 in excess of those documented to the employer for tax
16 purposes;

17 (d) contributions made by the employer to a group
18 insurance or pension plan; or

19 (e) vacation or sick leave benefits accrued but not
20 paid.

21 (3) For compensation benefit purposes, the average
22 actual earnings for the four pay periods immediately
23 preceding the injury are the employee's wages, except if:

24 (a) the term of employment for the same employer is
25 less than four pay periods, in which case the employee's

1 wages are the hourly rate times the number of hours in a
2 week for which the employee was hired to work; or

3 (b) for good cause shown by the claimant, the use of
4 the four pay periods does not accurately reflect the
5 claimant's employment history with the employer, in which
6 case the insurer may use additional pay periods.

7 (4) (a) For the purpose of calculating compensation
8 benefits for an employee working concurrent employments, the
9 average actual wages must be calculated as provided in
10 subsection (3).

11 (b) The compensation benefits for a covered volunteer
12 must be based on the average actual wages in his regular
13 employment, except self-employment as a sole proprietor or
14 partner who elected not to be covered, from which he is
15 disabled by the injury incurred.

16 (c) The compensation benefits for an employee working
17 at two or more concurrent remunerated employments must be
18 based on the aggregate of average actual wages of all
19 employments, except self-employment as a sole proprietor or
20 partner who elected not to be covered, from which the
21 employee is disabled by the injury incurred.

22 (5) The compensation benefits AND THE PAYROLL, FOR
23 PREMIUM PURPOSES, for a volunteer firefighter covered
24 pursuant to 39-71-118(3)(4) must be based upon the-volunteer
25 firefighter's--wages-or-earnings-in-his-normal-occupation: A

1 WAGE OF NOT LESS THAN \$900 A MONTH AND NOT MORE THAN 1 1/2
2 TIMES THE AVERAGE WEEKLY WAGE AS DEFINED IN THIS CHAPTER."

3 **Section 3.** Section 19-12-501, MCA, is amended to read:

4 "19-12-501. Eligibility for disability and death
5 benefits. ~~(1) In-order-to~~ To qualify for benefits under
6 19-12-504 ~~and-19-12-505~~, a firefighter must, at the time the
7 injury or sickness for which benefits are claimed was
8 incurred ~~or, in-the-case-of-a-claim-under-19-12-505,-at--the~~
9 ~~time-of-death~~, have been an enrolled active member of a fire
10 company not covered by workers' compensation insurance.

11 (2) To qualify for benefits under 19-12-505, a
12 firefighter must, at the time of death, have been an
13 enrolled active member of a fire company."

-End-